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InTouch PCS, Inc.

FCC Form 159

March 29, 1995

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Mr. William Caton
FCC Acting Secretary
1919 M Street N. W.
Room 222
Washington, D.C. 20554

93-253

Dear Mr. Caton:

Enclosed please find the Comments of InTouch PCS, Inc. To Emergency Petition for Waiver filed by Telephone Electronics Corporation ("TEC"). Please file these Comments in the ordinary course of business. We have sent a copy of these Comments to counsel for TEC under separate cover.

Please call if you have any questions regarding the Comments.

Sincerely,



Peter Nguyen

cc Ms. Cathy Sandoval w/encl. (Via Telefax 202- 416-1219)

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of

PP Docket No. 93-253

Implementation of Section 309 (j)
of the Communications Act -
Competitive Bidding

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**COMMENTS OF INTOUCH PCS, INC. TO EMERGENCY PETITION FOR
WAIVER FILED BY TELEPHONE ELECTRONICS CORPORATION**

Pursuant to the Commission's rules, InTouch PCS, Inc. ("InTouch"), respectfully submits its comments to the Emergency Petition For Waiver filed with the Commission on March 28, 1995, by Telephone Electronics Corporation ("TEC").

InTouch is a Missouri corporation qualified to do business in Illinois and has its principal place of business located in Chicago, Illinois. InTouch was recently organized for the purposes of bidding on and acquiring broadband personal communications services licenses on frequency blocks C or F at the auctions to be conducted by the Commission and to operate a wireless broadband personal communications services business. InTouch is a small business owned and controlled by minorities as defined by the Commission's rules as set forth in the Fifth Report and Order, 9 FCC Rcd 5532

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(1994) and Fifth Memorandum Opinion and Order, 10 FCC Rcd 403 (1994) in PP Docket No. 93-253.¹

In its Petition, TEC requested the Commission to waive the requirements of Section 24.709(a)(1) "... to the extent that the rule is applied to include the gross revenues of TEC's non-rural telephone company affiliates in determining whether a rural telephone company meets the gross revenue cap of \$125 million in each of the last two calendar years, established in Section 24.709 (a)(1)." (TEC Petition at p. 1). TEC specifically stated that it did "... not seek a waiver of the gross revenue cap itself, or of the \$500 million total assets cap." Id. TEC further narrowed and limited its request for waiver as follows:

"TEC has limited its request for waiver to those BTAs in which TEC's rural telephone companies presently have exchanges that are used exclusively to provide service to rural areas. TEC's rural telephone companies specifically request a waiver of the Commission's rules to enable them to bid on the channel C and F licenses in eight BTAs: BTA No. 246 Laurel, MS; BTA No. 186 Hattiesburg, MS; BTA No. 292 Meridian, MS; BTA No. 17 Anniston, AL; BTA No. 334 Opelika-Auburn, AL; BTA No. 146 Florence, AL; BTA No. 211 Jackson, TN; and BTA No. 83 Clarksville, TN. Under this waiver, TEC would be permitted to upgrade service to the customers of its rural telephone companies by providing personal communication services. TEC does not seek through this request for a waiver to bid on channel C and F licenses for non-rural BTAs, defined as those with populations in excess of 300,000 people." (TEC Petition at p. 4).

Apparently, TEC has limited its request for waiver to the basic trading areas described above because they are the only basic trading areas where TEC's rural telephone companies provide telephone service and which have a population of less than 300,000 as defined in the 1990 census.

¹ 47 C.F.R. Sections 24.701 through 24.720

InTouch supports TEC's Emergency Petition For Waiver and requests the Commission to grant the relief sought by TEC in its Petition as soon as is reasonably practicable, provided, however, that as conditions of InTouch supporting TEC's request for waiver, TEC must dismiss with prejudice its lawsuit currently pending in the U.S. Court of Appeals, which is referenced in footnote 3 of TEC's Petition (the "Litigation"), and TEC must agree not to use the allegations or legal theories set forth in the pending Litigation as a basis to sue any applicant or licensee in connection the auction or the award of the licenses on frequency blocks C or F.

Respectfully Submitted,

INTOUCH PCS, INC.

By: 

Peter Nguyen
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March 29, 1995